

IN THE UNITED STATES DISTRICT COURT
 FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

09104-055
 (Inmate Number)

Neal Benjamin
 (Name of Plaintiff)

(Address of Plaintiff)

vs.

United States of America

Congress

(Names of Defendants)

4:19-CV-1973
 (Case Number)

COMPLAINT

FILED
 SCRANTON

NOV 18 2019

PER 
 DEPUTY CLERK

TO BE FILED UNDER: ☒ 42 U.S.C. § 1983 - STATE OFFICIALS
☐ 28 U.S.C. § 1331 - FEDERAL OFFICIALS

I. Previous Lawsuits

- A. If you have filed any other lawsuits in federal court while a prisoner please list the caption and case number including year, as well as the name of the judicial officer to whom it was assigned:

N/A

II. Exhaustion of Administrative Remedies

- A. Is there a grievance procedure available at your institution?
☐ Yes ☐ No

- B. Have you filed a grievance concerning the facts relating to this complaint?
☐ Yes ☐ No

If your answer is no, explain why not N/A

- C. Is the grievance process completed? ☐ Yes ☐ No

III. Defendants

(In Item A below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use Item B for the names, positions and places of employment of any additional defendants.)

A. Defendant United States of America/Congress is employed
as _____ at _____

B. Additional defendants _____

IV. Statement of Claim

(State here as briefly as possible the facts of your case. Describe how each defendant is involved, including dates and places. Do not give any legal arguments or cite any cases or statutes. Attach extra sheets if necessary.)

1. Congress: First Step Act of 2018 violates Plaintiff's Constitutional
rights under the Fifth Amendment pursuant to Equal Protection Rights
and Equal Treatment that results from the imposition that bars reduction
of sentence eligibility for cocaine base (crack) pursuant to §841(b)(1)(c)
while giving reduced sentence eligibility to 841(b)(1)(A) and (b)(1)(B)
(See attached Denial)
2. Plaintiff was sentenced to 30 years for 14 kilograms of cocaine base
estimated by the Probation office that was never found by Plaintiff's
Jury.
3. _____

V. Relief

(State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.)

1. \$3,500 a day starting from January 1, 2019 until the date ending violation
of Plaintiff's Constitutional Rights under the Fifth Amendment Equal
Treatment.

- 2.

- 3.

Signed this 11 day of November 2019.

Neal Benjamin
 (Signature of Plaintiff)

I declare under penalty of perjury that the foregoing is true and correct.

November 11, 2019
 (Date)

Neal Benjamin
 (Signature of Plaintiff)

Other Orders/Judgments

1:97-cr-00133-RJA-LGF USA v.
Benjamin et al **CASE CLOSED**
on 02/03/2009

CLOSED_2003

U.S. DISTRICT COURT

U.S. District Court, Western District of New York

Notice of Electronic Filing

The following transaction was entered on 3/15/2019 at 8:47 AM EDT and filed on 3/15/2019

Case Name: USA v. Benjamin et al

Case Number: 1:97-cr-00133-RJA-LGF

Filer:

Document Number: 930(No document attached)

Docket Text:

TEXT ORDER as to Neal Benjamin, setting schedule on *pro se* Defendant's [927] Motion to Reduce his Sentence Pursuant to Section 404 of the First Step Act. Supplemental PreSentence Report due 3/25/2019. Response due 4/2/2019. Reply due 4/16/2019. A copy of this entry has been mailed to Neal Benjamin, 09104-055, ALLENWOOD LOW FEDERAL CORRECTIONAL INSTITUTION, Inmate Mail/Parcels, P.O. BOX 1000, WHITE DEER, PA 17887. SO ORDERED. Issued by Hon. Richard J. Arcara on 3/15/19.(LAS)

1:97-cr-00133-RJA-LGF-2 Notice has been electronically mailed to:

David G. Jay (Terminated) davidgjay@verizon.net

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Terry Granger (Terminated) tgranlaw@aol.com

Attachment # 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

97-CR-133-RJA

NEAL BENJAMIN,

Defendant.

RESPONSE TO MOTION PURSUANT TO
SECTION 404 OF THE FIRST STEP ACT

The United States of America, by and through its attorneys, James P. Kennedy, Jr., United States Attorney for the Western District of New York, and Joseph M. Guerra, III, Assistant United States Attorney, of counsel, hereby responds to the defendant's motion pursuant to Section 404 of the First Step Act. The government states as follows:

1. By way of a motion filed March 12, 2019, the defendant has moved for a reduction of his sentence of imprisonment and supervised release based upon Section 404 of the First Step Act which was effective December 21, 2018. The following is the government's response to this motion.

Prior Proceedings

2. By way of a superseding indictment returned on April 28, 1998, the defendant was charged with various violations relating to the distribution of controlled substances (Docket Item 164). The defendant proceeded to trial and, on December 17, 1999, was convicted of Counts 1 and 3 of the superseding indictment which charged, respectively,

Attachment #4

conspiracy to distribute cocaine, cocaine base and marijuana in violation of 21 U.S.C. §§ 841(a)(1) and 846, and distribution of cocaine base in violation of 21 U.S.C. § 841(a)(1) (Docket Item 360)¹.

3. The presentence report (PSR) found that the defendant was subject to the penalties of 21 U.S.C. § 841(b)(1)(C) for both counts of conviction (Docket Item 883, p.1; ¶49). The first and second attempts at sentencing the defendant resulted in appellate orders vacating the sentences and directing re-sentencings (Docket Items 677, 809). On December 18, 2008, the defendant was sentenced principally to 30 years imprisonment and 3 years supervised release.

4. The defendant has now moved for a reduced sentence of imprisonment and supervised release pursuant to the First Step Act of 2018.

First Step Act of 2018

4. Section 404 of the First Step Act provides as follows:

SEC. 404. Application of Fair Sentencing Act.

(a) Definition of covered offense.—In this section, the term “covered offense” means a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372), that was committed before August 3, 2010.

¹ Although Count 1 of the superseding indictment alleged enhanced penalties based on drug quantity pursuant to 21 U.S.C. § 841(b)(1)(A), the jury’s verdict found no drug quantities thereby negating such enhanced penalties. As a result, as with Count 3, the defendant was only subject to the penalties of § 841(b)(1)(C) on his conviction of Count 1.

(b) Defendants previously sentenced.—A court that imposed a sentence for a covered offense may, on motion of the defendant, the Director of the Bureau of Prisons, the attorney for the Government, or the court, impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372) were in effect at the time the covered offense was committed.

(c) Limitations.—No court shall entertain a motion made under this section to reduce a sentence if the sentence was previously imposed or previously reduced in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372) or if a previous motion made under this section to reduce the sentence was, after the date of enactment of this Act, denied after a complete review of the motion on the merits. Nothing in this section shall be construed to require a court to reduce any sentence pursuant to this section.

5. Section 2 of the Fair Sentencing Act of 2010 increased the amounts of cocaine base necessary to trigger the 5 and 10 year mandatory minimum terms of imprisonment of 21 U.S.C. §§ 841(b)(1)(B) and (A), respectively, from 5 and 50 grams to 28 and 280 grams. Section 3 of the Fair Sentencing Act also eliminated the enhanced penalties for a violation of 21 U.S.C. § 844(a) involving in excess of 5 grams of cocaine base.

6. Important to this case, the Fair Sentencing Act did not affect the sentences of defendants sentenced pursuant to 21 U.S.C. § 841(b)(1)(C). The defendant recognizes in his motion that he was sentenced pursuant to § 841(b)(1)(C) (Docket Item 927, at 1, 3). As set forth above, this is consistent with the PSR which similarly found that § 841(b)(1)(C) applied to the defendant. Accordingly, the First Step Act affords no relief to the defendant.

7. By way of a memorandum dated April 1, 2019, the Probation Office found that the defendant is also not entitled to a reduction of his sentence based on amended drug Sentencing Guidelines.

Conclusion

It is respectfully submitted that the defendant's motion should be denied in all respects.

DATED: Buffalo, New York, April 1, 2019.

JAMES P. KENNEDY, JR.
United States Attorney

BY: */s/JOSEPH M. GUERRA, III*
Assistant United States Attorney
United States Attorney's Office
Western District of New York
138 Delaware Avenue
Buffalo, New York 14202
716/843-5824
joseph.m.guerra@usdoj.gov

To: Neal Benjamin
Reg. No. 09104-055
FCC Allenwood Low
PO Box 1000
White Deer, PA 17887

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

97-CR-133

NEAL BENJAMIN,

Defendant.

NOTICE OF APPEARANCE

TO: Clerk of the United States District Court
for the Western District of New York

You are hereby requested to enter my appearance as counsel for the United States on
the above-entitled action.

DATED: Buffalo, New York, March 14, 2019.

JAMES P. KENNEDY, JR.
United States Attorney

By: /s/JOSEPH M. GUERRA, III
Assistant United States Attorney
United States Attorney's Office
Western District of New York
138 Delaware Avenue
Buffalo, New York 14202
(716) 843-5824
joseph.m.guerra@usdoj.gov

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

97-CR-133

NEAL BENJAMIN,

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2019, I filed the foregoing NOTICE OF APPEARANCE with the Clerk of the District Court using its CM-ECF system. As the defendant is representing himself pro se, I further certify that the foregoing was provided to him via United States mail with delivery to be made at his place of incarceration stated below:

Neal Benjamin
#09104-055
FCI Allenwood Low
Federal Correctional Institution
P.O. Box 1000
White Deer, PA 17887

/s/ KATHLEEN M. RIEMAN

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

97-CR-133

NEAL BENJAMIN,

Defendant.

CERTIFICATE OF SERVICE

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Neal Benjamin
#09104-055
FCI Allenwood Low
Federal Correctional Institution
P.O. Box 1000
White Deer, PA 17887

/s/ KATHLEEN M. RIEMAN

Orders on Motions

10/25/2019-00133-RJA-LGF USA v.
Benjamin et al **CASE CLOSED**
 on 02/03/2009

CLOSED_2003

U.S. DISTRICT COURT

U.S. District Court, Western District of New York

Notice of Electronic Filing

The following transaction was entered on 10/22/2019 at 10:37 AM EDT and filed on 10/22/2019

Case Name: USA v. Benjamin et al
Case Number: 1:97-cr-00133-RJA-LGF
Filer:
Document Number: 939

Docket Text:

ORDER as to Neal Benjamin (2): For the reasons stated in the accompanying Order, defendant's [927] Motion to Reduce Sentence pursuant to 18 U.S.C. § 3582 and the First Step Act of 2018, Pub. L. N. 115-391, § 404, 132 Stat. 5194 (Dec. 21, 2018) is denied. A copy of the Order and this entry have been mailed to Neal Benjamin, 09104-055, ALLENWOOD LOW FEDERAL CORRECTIONAL INSTITUTION, Inmate Mail/Parcels, P.O. BOX 1000, WHITE DEER, PA 17887. SO ORDERED. Signed by Hon. Richard J. Arcara on 10/21/2019.(LAS)

1:97-cr-00133-RJA-LGF-2 Notice has been electronically mailed to:

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 Margot S. Bennett (Terminated) margotesq@aol.com
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 Thomas S. Duszkievicz thomas.s.duszkievicz@usdoj.gov, karen.a.brown@usdoj.gov
 Terry Granger (Terminated) tgranlaw@aol.com

10/25/2019

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ORDER
97-CR-133-A

NEAL BENJAMIN,

Defendant.

Defendant Neal Benjamin has filed a *pro se* motion for resentencing pursuant to 18 U.S.C. § 3582 and the First Step Act of 2018, Pub. L. N. 115-391, § 404, 132 Stat. 5194 (Dec. 21, 2018). Defendant Benjamin acknowledges that his sentence of imprisonment was imposed under 21 U.S.C. § 841(b)(1)(C). Dkt. No. 927, p. 1, 3. He was sentenced to imprisonment without reference to a statutory mandatory-minimum term of imprisonment and within Sentencing Guidelines ranges based upon quantities of cocaine base that do not authorize a sentence reduction under the First Step Act and § 3582. See Dkt. Nos. 865, 883, pp. 9-10. The Court has considered the defendant's other arguments in support of a sentence reduction and finds they are all without merit. See *e.g.*, Dkt. No. 933. The defendant's motion for resentencing is denied.

IT IS SO ORDERED.

s/Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: October 21, 2019

10/25/2019 Lobban (Terminated) LLOBO57@aol.com

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Cheryl Meyers Buth cmbuth@mblg.us

1:97-cr-00133-RJA-LGF-2 Notice has been delivered by other means to:

Neal Benjamin(Terminated)
09104-055
ALLENWOOD LOW
FEDERAL CORRECTIONAL INSTITUTION
Inmate Mail/Parcels
P.O. BOX 1000
WHITE DEER, PA 17887

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1042579058 [Date=10/22/2019] [FileNumber=4295106-0] [447aa09101b0cabe53fb215fe9b97d5ddd7aed7317041f25244eb3b0f268612ef674eb12864e6379b868140d0f7a37cd448a3657d1b74603bd7ba13c2cbeae3b]]

Neal Benjamin # 09104-055
Federal Correctional Complex Allenwood - Low
P.O. Box 1000
White Deer PA 17887



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NOV 18 2019
PER *[Signature]*
DEPUTY CLERK

Low Security Correctional Institution
Allenwood, PA 17817

Date _____

The enclosed letter was processed through special mailing procedures for forwarding to you. The letter has neither been opened nor inspected. If the writer raises a question or problem over which this facility has no jurisdiction, you may wish to request additional material for further information. If the writer encloses correspondence for forwarding to another address, please indicate the enclosure to the writer.

09104-055
Peter J Weish
235 N Washington AVE
Scranton, PA 18501
United States

(Legal Mail)